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HEWLETT PACKARD COMPANY  
P O BOX 272400, 3404 E. HARMONY ROAD  
INTELLECTUAL PROPERTY ADMINISTRATION  
FORT COLLINS, CO 80527-2400

EXAMINER

MISIURA, BRIAN THOMAS

ART UNIT PAPER NUMBER

2112

DATE MAILED: 10/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/743,610	<b>Applicant(s)</b> FARKAS ET AL.	
	<b>Examiner</b> Brian T. Misiura	<b>Art Unit</b> 2112	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>6/15/2005</u>   | 6) <input type="checkbox"/> Other: _____                                    |

*RD*

### **Detailed Action**

#### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-25 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of copending Application No. 10/743,619. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the limitations of the subject application are also within the claims of the copending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2112

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1-5, 8, 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Alexander et al, U.S. Patent No. 6,188,602.

2. As per claim 1, Alexander discloses: a computer system comprising:

- a memory comprising a host and an image file (column 4, lines 57-61, figure 1 numeral 128);
- a processor configured to execute the host (column 4, lines 57-61, figure 1 numeral 102);
- an input/output (I/O) controller coupled to the processor (figure 1 numeral 108); and
- a management processing system coupled to the I/O controller and comprising a -volatile memory (figure 2 numerals 110 and 212);
- wherein the host is configured to cause the processor to provide the image file to the management processing system, and wherein the management processing system is configured to store the image file in the non-volatile memory in response to receiving the image file from the host (column 4 lines 57-67, column 5 lines 29-45, figures 1, 2, 3, 3a).

3. As per claim 2, Alexander discloses: the management processing system comprising a network connection that is configured to provide a remote user with access to the computer system (column 3 lines 6-8, figure 1, "local area network (LAN) card" would allow remote user access to the system).

4. As per claim 3, Alexander discloses: the management processing system configured to provide status information associated with the computer system to the remote user (column 3 lines 37-49, figure 1).

5. As per claim 4, Alexander discloses: a computer system comprising: a PCI bus (figure 1 numeral 13) coupled to the I/O controller and the management processing system; wherein the I/O controller comprises a PCI controller (column 3 lines 6-8, 25-28, figure 1).

6. As per claim 5, Alexander discloses: a computer system wherein a host is configured to be executed by a processor subsequent to an operating system being booted by the processor (column 4 lines 57-61, figure 1).

7. As per claim 8, Alexander discloses: the computer system wherein the host is configured to be executed by the processor using an Intermediate System Loader (ISL) protocol (column 3 lines 37-49, figure 1).

8. As per claim 14, Alexander discloses: the computer system wherein the image file comprises firmware (column 5, lines 29-45, figures 1, 2, 3, 3a).

9. As per claim 15, Alexander discloses: the computer system wherein the memory comprises a configuration file, and wherein the processor is configured to cause the image file to be provided to the management processing system in response to information in the configuration file (Alexander, column 4 lines 57-67, figure 1).

10. As per claim 16, Alexander discloses: the computer system wherein the non-volatile memory comprises flash memory (column 6 lines 20-33, figure 1 and 2).

11. Claims 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Chilton, U.S. Patent No. 6,948,031.

Art Unit: 2112

12. As per claim 17, Chilton discloses: a method performed by a computer system that comprises a management processing system (figure 3, numeral 68) coupled to an input/output (I/O) bus (figure 3 numerals 82, 84, 86, 88) comprising:

- providing a start upgrade message to the management processing system using the I/O bus; providing a first start file transfer message to the management processing system using the I/O bus; providing a first plurality of transmit data messages that comprise a first image file to the management processing system using the I/O bus (column 9 all lines and column 10 50-56, figure 5A);
- providing a first end file transfer message to the management processing system using the I/O bus (column 11 lines 30-67, column 12 lines 1-6, figure 6A, numerals 192 and 202);
- and receiving a first acknowledge message from the management processing system over the I/O bus indicating that the first image file has been stored (column 10 lines 26-66 figures 2 and 5B).

13. As per claim 18, Chilton discloses: the method of claim 17 further comprising:

- subsequent to receiving the first acknowledge message and in response to determining that there is a second image file to transfer to the management processing system: providing a second start file transfer message to the management processing system using the I/O bus; providing a second plurality of transmit data messages that comprise the second image file to the management processing system using the I/O bus (column 10 lines 50-56, figure 5A);
- providing a second end file transfer message to the management processing system using the I/O bus; (column 11 lines 30-67, column 12 lines 1-6, figure 6A, numerals 192 and 202)

- and receiving a second acknowledge message from the management processing system using the I/O bus indicating that the second image file has been stored (column 10 lines 26-66 figures 2 and 5B).

14. As per claim 19, Chilton discloses the method of claim 17 further comprising: providing the first start file transfer message to the management processing system using the I/O bus (column 11 lines 30-67, column 12 lines 1-6, figure 6A, numerals 192 and 202) in response to receiving a second acknowledge message (column 10 lines 26-66 figures 2 and 5B) associated with the firmware upgrade message from the management processing system (column 10 lines 50-56, figure 5A).

15. As per claim 20, Chilton discloses the method of claim 17 further comprising: providing one of the first plurality of transmit data messages to the management processing system using the I/O bus (column 10 lines 50-56, figure 5A) in response to receiving a second acknowledge message (column 10 lines 26-66 figures 2 and 5B) associated with the start file transfer message from the management processing system (column 11 lines 30-67, column 12 lines 1-6, figure 6A, numerals 192 and 202).

16. As per claim 21, Chilton discloses the method of claim 17 further comprising: providing the end file transfer message to the management processing system using the I/O bus (column 11 lines 30-67, column 12 lines 1-6, figure 6A, numerals 192 and 202) in response to receiving a second acknowledge message (column 10 lines 26-66 figures 2 and 5B) associated with one of the first plurality of transmit data messages from the management processing system (column 10 lines 50-56, figure 5A).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al, U.S. Patent No. 6,188,602, in view of Uber et al, U.S. Patent No. 6,816,963.

18. As per claim 6, Alexander does not disclose: the computer system of claim 1 wherein the host is configured to be executed by the processor prior to an operating system being booted by the processor

However, Uber discloses: the computer system of claim 1 wherein the host is configured to be executed by the processor prior to an operating system being booted by the processor (Uber, column 2 lines 60-67, column 3 lines 1-13, figure 5).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Uber into the system of Alexander to achieve firmware upgrade prior to the operating system being booted.

The modification would have been obvious because one having ordinary skill in the art would want to achieve firmware upgrade prior to the operating system being booted (Uber, column 2 lines 60-67, column 3 lines 1-13, figure 5).

19. As per claim 7, Alexander does not disclose: the computer system of claim 1 wherein the host is configured to be executed by the processor using an Extensible Firmware Interface (EFI) protocol.



However, Uber discloses: the computer system of claim 1 wherein the host is configured to be executed by the processor using an Extensible Firmware Interface (EFI) protocol (Uber, column 2 lines 60-67, column 3 lines 1-13, figure 5).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Uber into the system of Alexander to achieve firmware upgrade using an EFI interface protocol, prior to the operating system being booted.

The modification would have been obvious because one having ordinary skill in the art would want to achieve firmware upgrade using an EFI interface protocol, prior to the operating system being booted (Uber, column 2 lines 60-67, column 3 lines 1-13, figure 5).

20. Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Alexander et al, U.S. Patent No. 6,188,602, in view of Chilton, U.S. Patent No. 6,948,031.

21. As per claim 9, Alexander does not disclose: the computer system of claim 1 wherein the host is configured to cause the processor to provide the image file to the management processing system using a plurality of messages, and wherein each of the plurality of messages comprises a header and a body (Chilton, column 6 lines 63-67 column 7 lines 1-17 figure 3, figure 5A).

However, Chilton discloses the computer system of claim 1 wherein the host is configured to cause the processor to provide the image file to the management processing system using a plurality of messages, and wherein each of the plurality of messages comprises a header and a body (Chilton, column 6 lines 63-67 column 7 lines 1-17 figure 3, figure 5A).

Art Unit: 2112

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Chilton into the system of Alexander to provide a file to a system via a plurality of messages.

The modification would have been obvious because one having ordinary skill in the art would want to provide a file to a system via a plurality of messages (Chilton, column 6 lines 63-67 column 7 lines 1-17 figure 3, figure 5A).

22. As per claim 10, Alexander does not disclose: the computer system of claim 9 wherein each of the headers comprises a first indicator that identifies a message type and a second indicator that identifies a message ID.

However, Chilton discloses the computer system of claim 9 wherein each of the headers comprises a first indicator that identifies a message type and a second indicator that identifies a message ID (Chilton, column 9 lines 1-23, figure 5A numerals 146 and 150).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Chilton into the system of Alexander to provide locations in the messages for specific information.

The modification would have been obvious because one having ordinary skill in the art would want to provide locations in the messages for specific information (Chilton, column 9 lines 1-23, figure 5A numerals 146 and 150).

23. As per claim 11, Alexander does not disclose: the computer system of claim 1 wherein the host is configured to cause the processor to provide a start file transfer message to management processing system prior to causing the image file to be provided to the management processing system, and wherein the host is configured to cause the processor to provide an end file transfer message to management processing

system subsequent to causing the image file to be provided to the management processing system.

However, Chilton discloses the computer system of claim 1 wherein the host is configured to cause the processor to provide a start file transfer message to management processing system prior to causing the image file to be provided to the management processing system, and wherein the host is configured to cause the processor to provide an end file transfer message to management processing system subsequent to causing the image file to be provided to the management processing system. (Chilton, column 11 lines 30-67, column 12 lines 1-6, figure 6A, numerals 192 and 202).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Chilton into the system of Alexander to provide a messaging system for transferring information.

The modification would have been obvious because one having ordinary skill in the art would want to provide a messaging system for transferring information (Chilton, column 11 lines 30-67, column 12 lines 1-6, figure 6A, numerals 192 and 202).

24. As per claim 12, Alexander does not disclose: the computer system of claim 11 wherein the management processing system is configured to store the image file in the non-volatile memory in response to receiving the end file transfer message.

However, Chilton discloses: the computer system of claim 11 wherein the management processing system is configured to store the image file in the non-volatile memory (Chilton, column 5 lines 20-21 figure 2) in response to receiving the end file transfer message (Chilton, column 9 lines 32-57, figures 2-3).

Art Unit: 2112

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Chilton into the system of Alexander to provide a location that will store the file even after power is removed from the system.

The modification would have been obvious because one having ordinary skill in the art would want to provide a location that will store the file even after power is removed from the system (Chilton, column 5 lines 20-21 figure 2) and (Chilton, column 9 lines 32-57, figures 2-3).

25. As per claim 13, Alexander does not disclose: the computer system of claim 12 wherein the management processing system is configured to provide an acknowledge message to the host subsequent to storing the image file in the non-volatile memory.

However, Chilton discloses: the computer system of claim 12 wherein the management processing system is configured to provide an acknowledge message to the host subsequent to storing the image file in the non-volatile memory (Chilton, column 10 lines 26-66 figures 2 and 5B).

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Chilton into the system of Alexander to keep the system informed that the file transfer has completed.

The modification would have been obvious because one having ordinary skill in the art would want to keep the system informed that the file transfer has completed (Chilton, column 10 lines 26-66 figures 2 and 5B).

Art Unit: 2112

26. Claims 22-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chilton, U.S. Patent No. 6,948,031 in view of Alexander et al, U.S. Patent No. 6,188,602.

27. As per claim 22, Chilton discloses: a means executable by the processor for causing the processor to:

- provide an upgrade message to the management processing system; provide a start file transfer message to the management processing system; provide a plurality of transmit data messages that comprise the image file to the management processing system; provide an end file transfer message to the management processing system (Chilton, column 9 all lines and column 10 50-56, figure 5A);
- and receive an acknowledge message from the management processing system (Chilton, column 10 lines 26-66 figures 2 and 5B) indicating that the image file has been stored in the non-volatile memory (Chilton, column 5 lines 20-21 figure 2).

Chilton does not disclose a computer system comprising:

- a memory comprising an image file;
- a processor coupled to the memory;
- an input/output (I/O) controller coupled to the processor;
- a management processing system coupled to the I/O controller and comprising a non-volatile memory;

However, Alexander discloses a computer system comprising:

- a memory comprising an image file (column 4, lines 57-61, figure 1 numeral 128);

Art Unit: 2112

- a processor coupled to the memory (column 4, lines 57-61, figure 1 numeral 102);
- an input/output (I/O) controller coupled to the processor (figure 1 numeral 108);
- a management processing system coupled to the I/O controller and comprising a non-volatile memory (figure 2 numerals 110 and 212);

It would have been obvious to one having ordinary skill in the art at the time of the applicant's claimed invention to incorporate the teaching of Alexander into the system of Chilton to achieve firmware upgrade using an EFI interface protocol, prior to the operating system being booted.

The modification would have been obvious because one having ordinary skill in the art would want to achieve firmware upgrade using an EFI interface protocol, prior to the operating system being booted (Uber, column 2 lines 60-67, column 3 lines 1-13, figure 5).

28. As per claim 23, Chilton discloses: the computer system of claim 22 wherein the management processing system is configured to store the image file in the non-volatile memory (column 5 lines 20-21 figure 2) in response to receiving the end file transfer message (column 9 all lines and column 10 50-56, figure 5A).

29. As per claim 24, Chilton discloses: the computer system of claim 23 wherein the management processing system is configured to provide the acknowledge message (column 10 lines 26-66 figures 2 and 5B) to the means in response to storing the image file in the non-volatile memory (column 5 lines 20-21 figure 2).

30. As per claim 25, Chilton discloses: the computer system of claim 22 further comprising: a PCI bus coupled between the I/O controller and the management processing system (figure 3 numerals 64, 8, 84, 68).

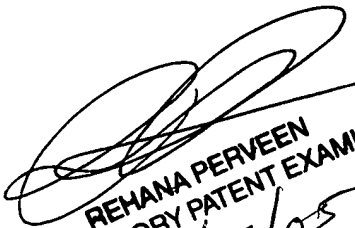
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian T. Misiura whose telephone number is (571) 272-0889. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rehana Perveen can be reached on (571)272-3676. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

BTM

  
REHANA PERVEEN  
SUPERVISORY PATENT EXAMINER  
10/17/05